Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXV

INJUNCTIONS AND RESTITUTION

Restitution required by [F1 FCA or PRA]

384 Power of [F1 FCA or PRA] to require restitution.

(1) **[**F2 The appropriate regulator**]** may exercise the power in subsection (5) if it is satisfied that an authorised person **[**F3 or recognised investment exchange**]** ("the person concerned") has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—

(a) that profits have accrued to him as a result of the contravention; or

(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

[F4 (2) The FCA may exercise the power in subsection (5) if it is satisfied that—

(a) a person ("the person concerned") has contravened Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or Article 15 (prohibition of market manipulation) of the market abuse regulation; and

(b) the condition mentioned in subsection (3) is fulfilled.**]**

(3) The condition is—

(a) that profits have accrued to the person concerned as a result of the **[**F5 contravention of Article 14 or 15 of the market abuse regulation**]**; or

(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the **[**F5 contravention of Article 14 or 15 of the market abuse regulation**]**.

F6 (4) . . . . . .

(5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the **[**F7 regulator exercising the

Status: *Point in time view as at 04/01/2018. This version of this provision has been superseded.*
Changes to legislation: *Financial Services and Markets Act 2000, Section 384 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

power ("the regulator concerned")**]** considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the **[**F8regulator concerned**]** to be just having regard—

(a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the **[**F8regulator concerned**]** to have accrued;

(b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;

(c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the **[**F8regulator concerned**]** to have accrued and to the extent of the loss or other adverse effect.

(6) "Appropriate person" means a person appearing to the **[**F9regulator concerned**]** to be someone—

(a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or

(b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).

(7) "Relevant requirement" means—

(a) a requirement imposed by or under this Act **[**F10or by **[**F11a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order**]]**; F12...

(b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence **[**F13mentioned in section 402(1)**][**F14; F15...

(c) a requirement imposed by the Alternative Investment Fund Managers Regulations 2013**]**. **[**F16and

(d) a requirement which is imposed by Part 7 of the Financial Services Act 2012 (offences relating to financial services) and whose contravention constitutes an offence under that Part.**]**

F17(8) . . . . . .

[F18(9) The PRA is the "appropriate regulator" in the case of a contravention of—

(a) a requirement that is imposed by the PRA under any provision of this Act,

(b) a requirement under section 56(6) where the authorised person concerned is a PRA-authorised person and the prohibition order concerned is made by the PRA, or

(c) a requirement under section 59(1) or (2) where the authorised person concerned is a PRA-authorised person and the approval concerned falls to be given by the PRA.

(10) In the case of a contravention of a requirement that is imposed by a qualifying EU provision, "the appropriate regulator" is whichever of the PRA or the FCA (or both) is specified by the Treasury by order in relation to the qualifying EU provision for the purposes of this section.

(11) In the case of a contravention of a requirement where the contravention constitutes an offence under this Act, the "appropriate regulator" is the regulator which has power to prosecute the offence (see section 401).

(12) The FCA is the "appropriate regulator" in the case of a contravention of any other requirement.

Status: *Point in time view as at 04/01/2018. This version of this provision has been superseded.*
Changes to legislation: *Financial Services and Markets Act 2000, Section 384 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(13) The Treasury may by order amend the definition of "appropriate regulator".**]**

Textual Amendments

F1 Words in s. 384 heading substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(9)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F2 Words in s. 384(1) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(2)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F3 Words in s. 384(1) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(2)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F4 S. 384(2) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, **10(16)(a)**

F5 Words in s. 384(3) substituted (3.7.2016) by The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, **10(16)(b)**

F6 S. 384(4) omitted (3.7.2016) by virtue of The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (S.I. 2016/680), regs. 1, **10(16)(c)**

F7 Words in s. 384(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(4)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F8 Words in s. 384(5) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(4)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F9 Words in s. 384(6) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(5)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F10 Words in s. 384(7)(a) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(5), **Sch. 5 para. 15**

F11 Words in s. 384(7)(a) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(6)(a)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F12 Word in s. 384(7) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 29(a)**

F13 Words in s. 384(7)(b) substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(6)(b)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F14 S. 384(7)(c) and word inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 29(b)**

F15 Word in s. 384(7)(b) omitted (1.4.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 3(4)**; S.I. 2014/377, art. 2(2)(c)

F16 S. 384(7)(d) and word inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 10 para. 3(4)**; S.I. 2014/377, art. 2(2)(c)

F17 S. 384(8) omitted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(7)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

F18 S. 384(9)-(13) inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 9 para. 23(8)** (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

Status: *Point in time view as at 04/01/2018. This version of this provision has been superseded.*
Changes to legislation: *Financial Services and Markets Act 2000, Section 384 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C1 S. 384 modified (18.7.2002 for certain purposes and 21.8.2002 otherwise) by The Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (S.I. 2002/1775), regs. 1, **12(1)**

C2 S. 384 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), **18(3)**

C3 S. 384 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 (S.I. 2013/441), arts. 1(1), **17(2)**

C4 S. 384 applied (with modifications) (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), **3(10)**

C5 S. 384 modified by S.I. 2002/1775, reg. 12(1)(1A) (as substituted (24.3.2015) by The Electronic Commerce Directive (Financial Services and Markets) (Amendment) Order 2015 (S.I. 2015/852), arts. 1(2), **2(3)**)

C6 S. 384 modified (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by The Mortgage Credit Directive Order 2015 (S.I. 2015/910), arts. 1(5), **23(1)(d)** (with Pt. 4)

C7 S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/2657, **arts. 1(1)**, 3 (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2)**, 23); S.I. 2001/3538, **art. 2(1)**
S. 384(5) extended (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2)**, 3; S.I. 2001/3538, **art. 2(1)**

Status:
Point in time view as at 04/01/2018. This version of this provision has been superseded.

Changes to legislation:
Financial Services and Markets Act 2000, Section 384 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.